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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/781,086

02/17/2004

Brock J. LaMeres

10031039-1

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7590

12/01/2005

AGILENT TECHNOLOGIES, INC.

Legal Department, DL429

Intellectual Property Administration

P.O. Box 7599

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EXAMINER

HOLLINGTON, JERMELE M

ART UNIT

PAPER NUMBER

2829

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/781,086	Applicant(s) LAMERES ET AL.	
	Examiner Jermele M. Hollington	Art Unit 2829	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 22-25.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 10-25.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5, 7-9.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Jermele M. Hollington
Primary Examiner
Art Unit: 2829

DETAILED ACTION

Advisory Action

Response to Arguments

1. Applicant's arguments filed Nov. 14, 2005 have been fully considered but they are not fully persuasive.

2. Applicant's arguments see pages 9-10, filed Nov. 14, 2005, with respect to claims 22-25 have been fully considered and are persuasive. The rejection of claims 22-25 has been withdrawn.

a) Regarding claim 1, the applicants' argue: "...Levy's base plate 12 does not provide any sort of means for aligning Levy's probe with test points. And, as admitted by the Examiner, Levy does not illustrate any "test points". Nor does Levy disclose how the probe shown in FIG. 3 would be "aligned" with test points..."

The examiner disagrees with the above arguments. In claim 1, it states: "...an alignment mechanism, attached to the PCB, for aligning the probe with respect to the test points on the target board." The examiner will like to remind the applicants that in MPEP 2114 it states that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See also *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997). With that mind, the examiner believes the rejection using the prior art is valid since the prior art discloses that an alignment mechanism, base plate 12 of the prior art, is attached to the PCB, PCB 10 of the prior art [see also Abstract, lines 1-3 and col. 3, lines 35-40 for further details between plate 12 and PCB 10]. Therefore, the prior art still reads on the claimed invention.

b) Regarding claim 8, the applicants' argue: "Levy never indicates that the base plate 12 is capable of "securing" a probe to a target board. Nor can applicants identify any sod of securing of Levy's probe to the target 50 in FIG. 4..."

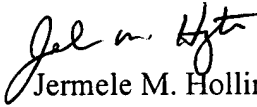
The examiner disagrees with the above arguments. In claim 8, it states: "...a mechanism, attached to the PCB, for securing the probe to said target board." The examiner will like to remind the applicants that in MPEP 2114 it states that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See also *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997). With that mind, the examiner believes the rejection using the prior art is valid since the prior art discloses that an alignment mechanism, base plate 12 of the prior art, is attached to the PCB, PCB 10 of the prior art [see also Abstract, lines 1-3 and col. 3, lines 35-40 for further details between plate 12 and PCB 10]. Therefore, the prior art still reads on the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermele M. Hollington whose telephone number is (571) 272-1960. The examiner can normally be reached on M-F (9:00-4:30 EST) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on (517) 272-2034. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2829

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jermele M. Hollington
Primary Examiner
Art Unit 2829

JMH
November 29, 2005